

REMARKS

In accordance with the foregoing, claims 2-31 are pending and under consideration. Respectfully, the rejections are traversed below.

Examiner Interview

Appreciation is expressed to the Examiner for the Interview granted by the Examiner on July 29, 2008 to discuss independent claims 17, 30, and 31. During the interview, an agreement was not reached about the 35 USC 103 rejections but the Examiner did agree that the specification discloses that the agent and manager include hardware.

Claim Rejections under 35 USC 101

Claims 17-23, 29 and 31 were rejected under 35 USC § 101 because the claimed invention is allegedly directed to non-statutory subject matter. During the July 29, 2008 Interview, the Examiner stated that he considered the agent and manger to be software entities and constitute functional descriptive material.

MPEP § 2106 states that subject matter outside patentable statutory subject matter is limited to abstract ideas, laws of nature, and natural phenomena, where the claimed subject matter is not a *practical application or use* of an idea, a law of nature or a natural phenomena. Thus, a claim to an "abstract idea" is non-statutory when it does not represent a practical application of the idea. A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result (see, MPEP § 2106).

It is respectfully submitted that the agent and manager are defined as hardware in the specification and not as software entities. As described at page 12, lines 10-21 of the specification, with reference to FIG 3, the agent AG and managers MA1, MA2 have a controller that can generate and evaluate the messages for the state realignment, transceivers for sending and receiving the messages, and storage facilities for storing the state information and other user and signaling information. See page 12, lines 10-21 of the specification. Accordingly, claims 17-23, 29 and 31 overcome the 35 USC § 101 rejection.

Claim Rejections under 35 USC 103

Claims 17, 30, and 31 were rejected under 35 USC § 103(a) as being unpatentable over Tanaka et al (5,903,568) in view of Chari et al. (6,553,416).

Nothing has been cited or found in Tanaka that teaches or suggests a "manager ... sending a request message for performing state realignment to said agent" (e.g., claim 17, lines

4-5). Rather, Tanaka discusses a lower-layer manager 106 performing a service function in response to a request from an upper-layer manager 101, a plurality of lower-layer agents 107 performing a service function in response to a request from the lower-layer manager 106, and a plurality of lower-layer MIBs 108 which store information of managed objects to be accessed when the lower-layer agents 107 perform a service function. A "state realignment" would require that the manager and agents communicate with each other so that they are synchronized, i.e., store the same "state information associated ... with" (e.g., claim 17, line 3) the agents.

The synchronization performed in a state realignment is not an isolated service function of a lower-layer manager or lower-layer agent, but a joint function of both an upper-layer manager and a lower-layer agent. Accordingly, simply performing a service function is not a state realignment and thus, Tanaka does not teach or suggest all of the limitations recited in claims 17 and 31.

Chari relates to an SNMP manager that creates an information request which is sent to an SNMP agent. Alert type reports are generated spontaneously by SNMP agents whenever an alert condition is met, as for example, the cited transition of a temperature sensor from "normal" to "warning." See col. 10, lines 3-8. This is considered an information request where the information is dependent **on external conditions** (e.g., temperature). See col. 7, lines 5-8.

The MPEP states that:

Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings."). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.

In the specification, the "state" is defined by a telecommunications industry standard that includes a representation of operational readiness, manageability and use of the **resource in the communication system**. See pages 2, lines 3-6 and page 4, lines 8-9 of the application. This is in contrast with the information about external conditions (e.g., temperature) that is taught in Chari.

Since neither Tanaka nor Chari teach or suggest a "manager ... sending a request message for performing state realignment to said agent," claims 17 and 31 patentably distinguish over the cited art.

Claim 30 recites "sending ... a request message for performing state realignment." In view of the above arguments, it is respectfully submitted that claim 30 patentably distinguishes over the cited art.

Claims 2-16 and 18-29 were rejected under 35 USC 103(a) as being unpatentable over Tanaka and Chari further in view of Meandzija (6,404,743).

Claims 2-16 and 24-28 depend, directly or indirectly on independent claim 30 and claims 18-23 and 29 depend, directly or indirectly, on independent claim 17. Claims 2-16 and 18-20 include all of the features of their respective independent claims, plus additional features which are not taught or suggested by the cited art and therefore are patentably distinguishable. Furthermore, nothing has been cited or found in Meandzija that cures the deficiencies discussed above in regard to Tanaka in view of Chari.

New Claims

New claims 32-34 further define the term "state." Support for these new claims can be found in the specification at page 1, lines 28-30, page 2, lines 4-6 and page 4, lines 7-8. New claims 32-34 depend from claim 31, and include all of the features of that claim, plus additional features that are not taught or suggested by the cited art and therefore patentably distinguish over the cited art.

Summary

It is submitted that the references cited by the Examiner do not teach or suggest the features of the present claimed invention. Thus, it is submitted that claims 2-34 are in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

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If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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